

Appl. No. 10/632,074
Amdt. dated March 28, 2005
Reply to Office Action of December 29, 2004

REMARKS

This amendment is a submission under 37 CFR 1.114, Request for Continued Examination.

In the Office Action of December 29, 2004 the Examiner rejected all of the pending claims over various combinations of prior art. Claims 4 and 5 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 2,682,414 to Richardson (hereinafter Richardson) in view of U.S. Patent 846,389 to Blackburn (hereinafter Blackburn). Claims 6, 7, and 8 were rejected by the Examiner under 35 U.S.C. 103(a) as being unpatentable over Richardson and Blackburn and further in view of U.S. Patent 1,969,798 to Hultquist (hereinafter Hultquist). Claims 11-13 were rejected by the Examiner under 35 U.S.C. 103(a) as being unpatentable over Richardson in view of Blackburn and further in view of Hultquist and U.S. Patent 2,252,316 to Schiff (hereinafter Schiff).

The Examiner's remarks and the references cited therein were carefully reviewed by applicant. In response, applicant filed this Request for Continued Examination. Applicant herein amends claims 7 and 13 to recite that the notch in the planar keepers is arcuate for receiving the tent stake, as shown in Fig. 5. The other pending claims, 4, 5, 6, 11 and 12 were cancelled. Thus, the claims remaining in this case are 7, 8 and 13.

It is respectfully submitted that the claims as amended distinguish over the prior art cited by the Examiner and should be allowed.

At the outset, it is important to recognize that the Examiner is mistaken in his assertion that Richardson has an upper, closed end. The end piece 22 of Richardson is an enlarged end of the screwdriver bit 14, not a closed handle end. Richardson utilizes a handle 10 that is open at both ends, enabling the screwdriver bit 14 to slide up and down within the handle 10. Richardson describes his end piece 22 as a "finger gripping knob". It is threaded onto the end of the screwdriver bit 14 to enable the user to exert greater torque for turning screws. The end piece 22 remains on the end of the bit regardless of the shaft's

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position relative to the handle 10. Thus, the handle 10 of Richardson does not have a first closed end as asserted by the Examiner. For this reason alone, the Examiner's rejection of applicant's claims fails since none of the cited art teaches or suggests applicant's coupler having a first closed end.

The Examiner correctly notes that Richardson does not teach or suggest applicant's pair of retractable keepers having a notch for receiving a tent stake; nor does it teach applicant's pair of levers nor applicant's pair of springs. Noting these failings, the Examiner cited Blackburn in combination therewith. While Blackburn does teach a pair of retractable keepers and springs, Blackburn fails to teach or suggest applicant's planar keepers having a notch for receiving a tent stake. Contrary to the Examiner's assertion (4th full paragraph, page 3) Richardson does not teach "a retractable keeper 8 having a notch (fig. 3) for receiving drill steel". If the Examiner were referring to Hultquist, applicant points out that Hultquist's keeper 8 consists of two parallel pins held in place by a slight divergence of the holes 6c. His keeper is neither planar nor notched.

In making this rejection, the Examiner failed to consider all of the applicants definite claim limitations and in effect, has failed to consider the subject matter of the invention as a whole contrary to the plain language of 35 U.S.C. 103(a) "*the subject matter as a whole would have been obvious at the time the invention was made*". (emphasis added) Representative of many decisions on this topic are: *In re Angstadt*, 190 USPQ 214, 217 (C.C.P.A. 1976) "*We note at the outset that the claim limitation . . . must be given effect since we must give effect to all claim limitations.*" See also: *In re Bisley*, 94 USPQ 80, 83 (C.C.P.A. 1952) "*It appears to us that these claims define the angle of the pivot pin with respect to component elements of the mixer, albeit by geometrical language, in such a manner that the pin is structurally located, by the terms of these claims, at a substantial angle with respect to identified horizontal and vertical datum planes and within that range of angularity which will achieve appellant's desired novel result. Definite limitations in a claim should not be ignored or construed out of the claim. (citation omitted) Therefore, we think that claims 20 and 39 patentably define over Kochner et al. and that the board erred in rejecting these claims on that reference.*" (emphasis added)

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The Examiner appears to have used applicant's own invention as a template for making his rejection. Such a hindsight analysis is contrary to long established Patent Office and legal precedent, **In re Fritch**, 23 USPQ 2d 1780, 1784 (Fed. Cir. 1992)

"It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." (quoting In re Fine, 837 F.2d 1071, 1075, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988))."

Moreover, it must be emphasized that even if the combination of Richardson and Blackburn and Hultquist were made, it would still fail to anticipate applicant's invention of claim 7. Such combination fails to teach or suggest a coupler for attachment to a driving tool for driving and pulling double-headed tent stakes, comprising an axially elongate body having a first, closed end and a second, open end, said body having a pair of slots passing therethrough adjacent said open end, said slots being substantially orthogonal to said body elongate axis; a pair of retractable, planar keepers slidably received within said slots, each of said keepers further having an arcuate notch for receiving the tent stake; a pair of release levers pivotably attached to said elongate body, each one of said release levers having a distal end pivotably attached to a respective one of said planar keepers; and a pair of springs, each one of said springs being retained between said elongate body and a respective one of said release levers, said springs urging said release levers to a closed position.

Claim 8 adds further limitation to the coupler of claim 7 and should be considered allowable as well.

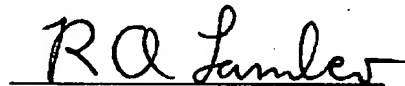
Claim 13 recites a stake driver and puller having the coupler of claim 7 attached to a slide hammer. In rejecting claim 13, the Examiner again recites the combination of

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Richardson and Blackburn and Hultquist with the addition of Schiff. This combination fails for the reasons given above concerning the coupler of claim 7 since the combination of Richardson and Blackburn fails to anticipate applicant's definite and clearly recited claim limitations. The addition of Schiff to the combination was made to add a slide hammer and correspondingly fails for the same reasons.

In view of the foregoing, the Examiner has failed to establish a *prima facie* showing of obviousness in applicants' invention. The Examiner has impermissibly relied on applicants own claimed invention as a guide in making the rejection. Claims 7, 8 and 13, as amended, clearly patentably distinguish over all of the prior art cited by the Examiner and the Examiner is requested to allow the claims as amended.

Respectfully submitted,



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